SAIPAN CHAMBER OF COMMERCE

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STATEMENT OF JAMES T. ARENOVSKI,
PRESIDENT OF THE SAIPAN CHAMBER OF COMMERCE,
BEFORE THE HOUSE SUBCOMMITTEE ON INSULAR AFFAIRS, OCEANS AND WILDLIFE

May 19, 2009

The Saipan Chamber of Commerce welcomes this opportunity to comment on Public Law 110-229, the Consolidated Natural Resources Act of 2008 (the "CNRA"), which extends the immigration laws of the United States to the Commonwealth of the Northern Mariana Islands. This imposition of federal immigration law on the Commonwealth significantly impacts three interrelated and critical aspects of our economy: the ability to attract tourists, the ability to attract and retain foreign investors, and access to foreign labor.

The Saipan Chamber of Commerce is the largest business organization in the Commonwealth, with approximately 150 members that range from individuals and small companies to some of the largest corporations operating in the Pacific region and which collectively employ thousands of individuals in the Commonwealth. The Chamber was founded in 1959 and incorporated in 1976, two years before the Northern Mariana Islands gained U.S. commonwealth status. The Chamber not only promotes and protects business interests in, and the economic interests of, the Commonwealth, but also works to promote the civic interests and general health and welfare of the Commonwealth community as a whole.

I. INTRODUCTION

The intent of Congress that "the Commonwealth be given as much flexibility as possible in maintaining existing businesses and other revenue sources, and developing new economic opportunities" will be subverted unless Congress takes further steps to ensure that the Commonwealth does not fall victim to a federal bureaucracy clearly unprepared to carry out the mandates of P.L. 110-229 at this time. The imposition of federal immigration law on the Commonwealth will have the effect of (1) terminating the Commonwealth's successful and effective Visitor Entry Permit (VEP) program and replacing it with an untested "Guam-CNMI Visa Waiver Program," under which Russian and Chinese tourists will be required to obtain a United States visa in order to enter the Commonwealth; (2) terminating the Commonwealth's foreign investor program, which has allowed the economic

development of the Commonwealth in a manner and to a degree that will not occur under the federal foreign investor visa program; and (3) terminating the Commonwealth's foreign worker program and replacing it with a "Commonwealth Only Transitional Worker" program which is initially scheduled to terminate on December 31, 2014, at which time employers in the Commonwealth will only have access to needed foreign labor through a federal employment visa program ill-suited to the unique needs of our islands.

The CNRA is a 124-page piece of legislation which primarily authorizes programs and activities in the Department of the Interior, the Forest Service, and the Department of Energy. Dramatic changes to the fundamental relationship between the Commonwealth and the United States government are introduced on page 101. Public Law 110-229 imposes on the Commonwealth a significant negative economic impact, the regulations relating to the Guam-CNMI Visa Waiver Program promulgated by the Department of Homeland Security ("DHS" or the "Department") unnecessarily compound that negative impact, and the Department's inability or unwillingness to issue regulations with respect to the Commonwealth's foreign investor and foreign worker populations causes additional harm. The Saipan Chamber of Commerce has submitted written comments to DHS in response to the issuance of the Department's interim final rule for the Guam-CNMI Visa Waiver Program. While we are disappointed by certain aspects of those regulations, we are even more concerned by the fact that DHS has not yet issued regulations with the Commonwealth's foreign investor and foreign worker populations. We are also distressed by the apparent lack of a publication requirement for the regulations concerning the Commonwealth Only Transitional Worker program.

II. THE GUAM-CNMI VISA WAIVER PROGRAM REGULATIONS

That Public Law 110-229 imposes on the Commonwealth a significant negative economic impact is unquestionable and is not refuted by either the supplementary information accompanying the interim final rule for the Guam-CNMI Visa Waiver Program published in the Federal Register or the economic analysis prepared by Industrial Economics, upon which several key determinations by DHS have been based in the rulemaking process. We believe that the CNRA allows the Department of Homeland Security the flexibility necessary to mitigate those negative effects to a much greater degree than would be accomplished under the published interim final rule, and accordingly have asked that the Department reconsider the exclusion of Russia and the People's Republic of China from the list of Visa Waiver Program participating countries. We have also asked

that the Secretary of Homeland Security identify any technical assistance or other support offered to the Commonwealth under the rule, identify with specificity the additional layered security measures referenced in the rule, reevaluate the Department's reliance on the economic analysis prepared by Industrial Economics, and provide incentives to foster longer-term tourist stays in the Commonwealth/Guam region.

The Commonwealth was granted the right to administer its own immigration system 33 years ago, in 1976. Fundamental aspects of the Commonwealth's entire tourism industry, whose visitors spend approximately $317 million dollars in the Commonwealth per year (as compared to the local government's overall annual revenues of approximately $150 million), have been premised on local control over immigration. Based on the October 31, 2008 Economic Analysis for the Interim Final Rule (the "Economic Analysis") prepared by Industrial Economics, Russian and Chinese tourists recently represented, collectively, 11 percent of total annual visitor arrivals and over 18 percent of total annual visitor expenditures in the Commonwealth during the baseline period of May 2007 to April 2008.

A. RUSSIA AND CHINA SHOULD BE INCLUDED IN THE LIST OF VISA WAIVER PROGRAM PARTICIPATING COUNTRIES

DHS's interim final rule specifically excludes nationals of Russia and China from the Guam-CNMI Visa Waiver Program. Section 702(b) of the CNRA requires inclusion on the list of visa waiver program participating countries:

> any country from which the Commonwealth has received a significant economic benefit from the number of visitors for pleasure within the one-year period preceding the date of enactment of the Consolidated Natural Resources Act of 2008, unless the Secretary of Homeland Security determines that such country's inclusion on such list would represent a threat to the welfare, safety, or security of the United States or its territories.

The Commonwealth and the Department agree that the Russian and Chinese visitors provide a significant benefit to the local economy – over 18 percent of total on-island expenditures made by all tourists in a recent one-year period studied by Industrial Economics. While the Chamber is not in a position to evaluate all possible welfare, safety, or security threats to the United States vis-à-vis the admission of Russian and Chinese visitors to our islands, we believe that a review of the Commonwealth's experience with visitors from those two nations over the past 12 years is instructive and should be considered when determining

whether to include Russia and China in the list of Guam-CNMI Visa Waiver Program participating countries. We are informed that in the existence of the Commonwealth's Visitor Entry Permit ("VEP") program there has never been an instance of a Russian national overstaying his permit. Likewise, we understand that there has been a minute number of Chinese overstayers under the VEP program and that in all of the very few instances in which Chinese tourists have overstayed their visas, the disposition of those overstayers was resolved in a timely manner. It was determined that in 2006, during a period of time in which 334,196 tourists entered the Commonwealth, there was one Chinese tourist who overstayed. We fail to understand how DHS can extrapolate, from a nearly flawless Russian and Chinese tourism record in these islands, that visitors from Russia and China would represent a threat to the welfare, safety, or security of the United States or its territories.

One factor certainly contributing to the successful minimization of overstaying Chinese tourists in the Commonwealth is bonding requirements for the tour agents who bring those tourists into the Commonwealth. The CNRA specifically acknowledges and provides for the inclusion of countries whose nationals may present an increased risk of overstaying or other potential problems on the list of visa waiver program participating countries. Section 702(b) of the CNRA provides that the regulations should include "any bonding requirements for nationals of some or all of those countries who may present an increased risk of overstays or other potential problems . . ." In conjunction with our request that DHS reconsider the exclusion of Russia and the People's Republic of China from the list of Visa Waiver Program participating countries, we suggested that DHS considers making use of the bonding requirement system that has served the Commonwealth well in developing a Chinese tourist market.

The Commonwealth has successfully administered a tourist entry program, having parameters somewhat similar to the Guam-CNMI Visa Waiver Program, for Russian and Chinese tourists. In light of the Commonwealth Only Transitional Worker program and the Commonwealth Only Foreign Investor visa program, passports and other travel documents for each individual entering or departing the Commonwealth will be checked at ports of entry/exit, and there is almost no chance that a national from either of those countries could successfully travel to the mainland United States illegally, using the Commonwealth as an initial port of entry. If the security of the Territory of Guam is the primary determinant, we see no legislative prohibition in the CNRA against limiting entry a particular class of tourist to, exclusively, either the Commonwealth or Guam. Furthermore, as regards Guam, we similarly note that any Russian or Chinese tourist who wished

to pose a threat to that territory, by virtue of its proximity to the Commonwealth, has had ample time to do so under the Commonwealth's VEP program – but that has not occurred. We have no reason to believe that the Russian and Chinese tourist demographics would change for the Commonwealth simply because of the federal government's assumption of immigration responsibilities. If anything, undesirable nationals from those countries would be less likely to attempt entry into the Commonwealth with the knowledge that their entrance was now being monitored by the federal, not local, government.

B. THE ECONOMIC ANALYSIS THAT HAS BEEN RELIED UPON BY THE DEPARTMENT OF HOMELAND SECURITY IS SUBSTANTIVELY FLAWED

We believe that the Economic Analysis is flawed in a number of important respects. This is consequential, given the obvious weight accorded that analysis by DHS, and the fact that considerations of "significant economic benefit" vis-à-vis potential threats to "the welfare, safety, or security of the United States or its territories" must involve a balancing test.

i. RELIANCE ON THE REPORT PREPARED FOR THE CANADIAN DEPARTMENT OF FINANCE ("AIR TRAVEL DEMAND ELASTICITIES: CONCEPTS, ISSUES AND MEASUREMENT") IS MISPLACED

Industrial Economics' entire analysis of the degree of negative impact to the Commonwealth economy likely to result from the implementation of the interim final rule, including the exclusion of Russian and Chinese nationals from the Guam-CNMI Visa Waiver Program is premised on the findings of a 2004 Canadian study which, in its introductory paragraph, clarifies that the study "reports on the findings of a review of the economics and business literature on empirically-estimated own-price elasticities of demand *for Canada and other major developed countries*." [Emphasis added.] The Commonwealth of the Northern Mariana Islands is neither Canada nor a major developed country. It is not even a state of the United States. It is a Commonwealth in political union with the United States, located approximately 6,000 miles west of Los Angeles. It is far closer to Tokyo, Beijing, Vladivostok, Seoul, and Manila, than it is to Washington, D.C., and tourist demographics reflect this reality. It is inappropriate to attempt to apply the own-price elasticities of demand for travel calculated for countries that span the width of entire continents to a small island community.

While foreign visitors might be rather forgiving (or more inelastic) with respect to an increase in the price associated with obtaining a visa that allows entry into and

travel within the entire United States of America, they would likely be less forgiving (or more elastic) in the event that there was a comparable increase in the price associated with entry into, and travel restricted within, the Commonwealth of the Northern Mariana Islands, or any other small town in the United States.

ii. THE REPORT FAILS TO RECOGNIZE ESTABLISHED STATISTICS AND INSTEAD RELIES ON ASSUMPTIONS

Industrial Economics assumes that Russian and Chinese visitors to the Commonwealth (1) are not representative of the Russian and Chinese populations as a whole and (2) the existing visitor pools from those countries will not be refused visas for entry. While we do not dispute that Russian and Chinese visitors to the Commonwealth may not represent the demographic of the average Russian or Chinese citizen, we do not agree that those tourists to the Commonwealth are so completely dissimilar from the overseas-travelling populations of Russia and China that existing quantitative data should be dismissed entirely. Likewise, we do not accept the company's apparent assumption that the imposition of federal immigration control in the Northern Marianas will result in no change to the entry refusal rates for Russian and Chinese tourists to the Commonwealth. Industrial Economics provides no basis for its sweeping assumptions.

In fiscal year 2007, the Department of State refused 12.4 percent of Russian B visa applications and 20.7 percent of Chinese B visas applications.

One of the central arguments cited in favor of federal takeover of immigration control in the Commonwealth was that "the CNMI does not have, and never will have, the capacity to properly control its borders" and that "even with good faith and an honest commitment, there are substantive and procedural problems that the local government simply cannot handle." The implication of those and many other similar assertions is clear: the Commonwealth has been allowing entry to many individuals from Russia and China who the federal government would not allow. In light of the federal B visa refusal statistics and the assertions by federal proponents of the CNRA that a main factor favoring federal assumption of immigration responsibilities in the Northern Marianas is the "lack of an effective pre-screening process," the only logical conclusion is that federal visa refusal rates for Russian and Chinese tourists desiring to visit the Commonwealth will at least mirror, if not exceed, existing federal visa refusal rates for tourists visiting the 50 states.

During the one-year period studied by Industrial Economics, the Commonwealth received 4,566 Russian tourists and 38,827 Chinese tourists, whose on-island spending totaled $20 million and $38 million, respectively. Although that economic benefit might seem insignificant at the federal level, it's vitally important to our economy. A refusal of 12.4 percent for Russian tourists to the Northern Marianas would result in 566 fewer Russian visitors and $2,480,000 less on-island spending. A refusal rate of 20.7 percent for Chinese tourists to the Northern Marianas would result in 8,037 fewer Chinese visitors and $7,866,000 less on-island spending. Collectively, the decreased Russian and Chinese tourist spending in the Commonwealth, based solely on federal visa refusal rates, would equal approximately $10,346,000, or 67 percent more than the $6.2 million estimate of Industrial Economics, which was based solely on an inapplicable analysis of air travel demand elasticity and which did not take into account the effects of federal visa refusal rates. The $10,346,000 represents only the loss of tourist dollars spent at on-island establishments. It does not take into account the decreased revenue to airlines, it does not take into account income or economic output multipliers, it does not take into account the resulting loss of revenues to the Commonwealth government, and it does not reflect the many jobs that will be lost in the islands.

iii. A LIMITED SURVEY OF RUSSIAN AND CHINESE TOURISTS CURRENTLY VISITING SAIPAN DEMONSTRATES THAT DECLINES IN TOURISTS FROM THOSE COUNTRIES WILL LIKELY BE MUCH MORE SIGNIFICANT THAN APPROXIMATED BY INDUSTRIAL ECONOMICS

The Saipan Chamber of Commerce prepared a limited survey for Russian and Chinese tourists regarding the likelihood of their returning to visit the Commonwealth under United States visa requirements. In conjunction with a number of larger hotels on Saipan, including the Aqua Resort Club, Hyatt Regency Saipan, Pacific Islands Club, Saipan Grand Hotel, and Saipan World Resort, over the course of a few days, 57 Russian tourists and 23 Chinese tourists completed the survey. While this survey is admittedly unscientific and the responses represent a tiny sample of the total number of Russian and Chinese visitors to the Commonwealth, it is an example of the type of research Industrial Economics could have performed on a much larger scale in order to base the Economic Analysis on fact, rather than theory. The results of the Chamber's survey clearly demonstrate that the assumptions of Industrial Economics are likely far from accurate.

Of 57 total Russian tourists polled, 53 (93 percent) responded that they would visit the Commonwealth again, "if [they] could continue to travel to the CNMI by obtaining only the Visitor Entry Permit, as [they] did for [their] current trip." In stark contrast, only 23 (40 percent) would visit either "the CNMI only" or "the CNMI and other U.S. destinations" in the event they "had to obtain a U.S. visa." A full 60 percent of the Russian respondents would either "visit only other U.S. destinations" or "would not visit any U.S. destination" if required to obtain a visa. Of the 23 who indicated that they would continue to visit the Commonwealth and/or other United States destinations by obtaining a federal visa, only 5 (9 percent of total respondents) indicated that they would visit only the Commonwealth if they obtained a federal visa. The remaining 91 percent indicated that they would also visit other United States destinations. Furthermore, of the 18 respondents who indicated that they would visit both the Commonwealth and other United States destinations with a federal visa, ten (59 percent of the 18) indicated that in the event they obtained a visa, they would "shorten any future stay in the CNMI in order to visit Guam or other areas of the United States."

The Industrial Economics analysis was based on the speculative travel behavior of tourists to "major developed countries" which apparently did not factor in the distinctly different demand elasticities of tourists to a small island. The Saipan Chamber of Commerce survey, on the other hand, is based on actual responses of the Commonwealth's current tourist base. Our survey clearly suggests that, as regards Russian tourists alone, the Commonwealth stands to lose over $12 million in direct on-island expenditures from Russian tourists who will chose not to travel to the Commonwealth in the event a United States visa is required for entry. In addition to this, there will be a decrease in the remaining expenditures as half of the tourists who indicated that they would continue to travel to the Commonwealth would shorten their stays in order to visit other United States destinations. In other words, the negative economic impact of decreased numbers of Russian tourists alone is likely more than *100 percent* greater than what Industrial Economics estimated as the total decrease in direct on-island spending by both Russian and Chinese tourists together.

Of 23 total Chinese tourists polled, 12 (52 percent) would "visit only other U.S. destinations" if required to obtain a visa. Of the 11 who would continue to visit the Commonwealth and other United States destinations by obtaining a federal visa, 100 percent indicated that they would "shorten any future stay in the CNMI in order to visit Guam or other areas of the United States." Based on these statistics, the Commonwealth stands to lose nearly $20 million in direct on-island

expenditures from Chinese tourists who will chose not to travel to the Commonwealth in the event a United States visa is required for entry. In addition to this, there will be a decrease in the remaining expenditures as all of the tourists who indicated that they would continue to travel to the Commonwealth would shorten their stays in order to visit other United States destinations. In other words, the negative economic impact of decreased numbers of Chinese tourists alone is likely over *300 percent* greater than what Industrial Economics estimated as the total decrease in direct on-island spending by both Russian and Chinese tourists combined.

Taken together, the direct on-island expenditures by Russian and Chinese tourists will likely decrease by over $32 million annually, or more than 10 percent of the aggregate expenditures by all visitors to the Commonwealth. This is over *400 percent* greater than the estimate of Industrial Economics – an estimate based solely on the speculative travel behavior of tourists to "major developed countries." A loss of 10 percent of tourist on-island expenditures (and the directly-related loss of taxes, fees, and jobs) would be ruinous to the Commonwealth economy and community.

C. THE DEPARTMENT OF HOMELAND SECURITY SHOULD IDENTIFY EXACTLY WHICH "LAYERED SECURITY MEASURES" WILL BE REQUIRED IN ORDER TO INCLUDE RUSSIA AND CHINA IN THE LIST OF VISA WAIVER PROGRAM PARTICIPATING COUNTRIES

Section III.A.2. ("'Significant Economic Benefit' Criteria") of the Supplementary Information accompanying the proposed rule confirms that visitors to the Commonwealth from both China and Russia during the one-year period preceding the date of enactment of the CNRA provided a significant economic benefit to the islands. However, due to what the Department terms "political, security, and law enforcement concerns, including high nonimmigrant visa refusal rates and concerns with cooperation regarding the repatriation of citizens . . . of the country subject to a final order of removal" tourists from Russia and China will not be eligible to participate in the Guam-CNMI Visa Waiver Program. As an initial observation, "political" concerns are not identified in the CNRA as a basis for excluding a country, particularly one whose tourists provided "significant economic benefit" to the CNMI, from the list of Guam-CNMI Visa Waiver Program participating countries. The CNRA provides only that a country may be excluded in the event that inclusion would "represent a threat to welfare, safety, or security of the United States or its territories and commonwealths." We also note that the national visa refusal rate for visitors from Russia (12.4 percent) is significantly

lower than the maximum visa refusal rate allowable under the current Guam Visa Waiver Program (16.9 percent).

Section III.A.2. further states that "[a]fter additional layered security measures, which may include, but are not limited to, electronic travel authorization to screen and approve potential visitors prior to arrival in Guam and the CNMI, and other border security infrastructure, DHS will make a determination as to whether nationals of the PRC and Russia can participate in the Guam-CNMI Visa Waiver Program." The Chamber has requested that the Department identify specifically which "layered security measures" will be necessary before the Department revisits the issue of including Russia and China in the list of Guam-CNMI Visa Waiver Program participating countries. Without the identification of specific benchmarks that would trigger an automatic review of the Department's determination regarding tourists from Russia and China, the above-referenced language is void of significance. Section 702(b) of the CNRA provides:

> The Governor of Guam and the Governor of the Commonwealth of the Northern Mariana Islands may request the Secretary of the Interior and the Secretary of Homeland Security to add a particular country to the list of countries whose nationals may obtain the waiver provided by this subsection, and the Secretary of Homeland Security may grant such request after consultation with the Secretary of the Interior and the Secretary of State . . .

The language of the interim final rule seems designed to offer a sense of prospective hope, but in reality offers nothing more than what was already included in the underlying legislation – the possibility that countries could be added to the list of Guam-CNMI Visa Waiver Program participating countries at some time in the future. There is no guarantee that the additional layered security measures will be implemented, and no guarantee that if they are implemented the Department will allow the inclusion of Russia and China in the list of Guam-CNMI Visa Waiver Program participating countries, or even consider such inclusion.

We have requested that, at a minimum, DHS identify exactly which layered security measures the Department will need to implement before the Secretary would reconsider including Russia and China in the list of Guam-CNMI Visa Waiver Program participating countries. We have also asked DHS that the rule include assurances that such security measures will, in fact, be implemented by the Department; a deadline by which the Department must implement such measures; and an assurance that, once the measures are implemented, the

Secretary will actively reassess, without further request from the governors of the Commonwealth or Guam, the inclusion of Russia and China in the list of Guam-CNMI Visa Waiver Program participating countries.

D. THE RULES SHOULD ALLOW AN INCENTIVE FOR LONGER-TERM TOURISTS TO VISIT BOTH GUAM AND THE CNMI UNDER THE VISA WAIVER PROGRAM THAT IS ALLOWED UNDER THE CNRA

DHS's interim final rule language sets the maximum stay in the Guam/Commonwealth region under the Guam-CNMI Visa Waiver Program at 45 days. We believe that the 45-day regional limitation is unnecessarily restrictive under the language of the CNRA and will unnecessarily limit the growth of the economy of the Commonwealth in a manner inconsistent with the CNRA's statement of congressional intent. Although a 45-day visit to either Guam or the Commonwealth represents a 200 percent increase for the Guam tourism industry, as compared to the current maximum allowable stay under the Guam Visa Waiver Program (15 days), it represents a 50 percent decrease for the Commonwealth tourism industry, as compared to the current maximum allowable stay under the CNMI Visitor Entry Permit program (90 days).

The rule, as currently drafted, does not make available to Guam-CNMI Visa Waiver Program tourists the possibility of an extended regional stay of 90 days that is allowable under the CNRA. Some visitors will choose to stay either exclusively in the Commonwealth or on Guam, and some visitors will choose to divide their time between the two locations. We believe that there is an opportunity to incentivize longer-term visitors to visit both locations, at the expense of neither. Section 702(b) of the CNRA allows "entry into and stay in Guam *or* the Commonwealth of the Northern Mariana Islands for a period *not to exceed* 45 days . . . " [Emphasis added.] This language clearly allows the Secretary of Homeland Security the authority to allow a tourist from an eligible country to stay in the Commonwealth for up to 45 days and in Guam for a separate stay of up to 45 days, without returning to the visitor's point of embarkation between the stays in the Commonwealth and on Guam. A maximum 90-day stay in the region is entirely consistent with the federal Visa Waiver Program, which allows tourists from eligible countries a 90-day stay within the United States. The rule, however, seems not to allow such an extended stay in the region. The interim final rule requires that an arriving eligible tourist must possess "a round trip ticket that is nonrefundable and nontransferable and bears a confirmed departure date not exceeding forty-five days from the date of admission to Guam or the CNMI." Under this rule, a tourist entering Guam for a 45-day visit in Guam would then be

required to return to his point of embarkation before commencing a 45-day visit to the Commonwealth, which would otherwise be allowable under the CNRA. We have requested that the language of section 212.1(q)(iv) be revised to permit tourists traveling to the region to visit the Commonwealth for a period of not more than 45 days and Guam for a period of not more than 45 days, without requiring departure and readmission. Such a language would be entirely permissible under the explicit language of the CNRA, and would encourage longer regional visits without threatening the welfare, safety, or security of the United States or its territories and commonwealths.

Although few visitors from the countries initially included in the Guam-CNMI Visa Waiver Program may currently enjoy visits of such durations, the flexibility offered by extending the maximum allowable stay to be consistent with that of the United States Visa Waiver Program would allow both the Commonwealth and Guam additional marketing opportunities and would also obviate the need to revisit this issue in the event that, in the future, visitors from a country who typically prefer longer stays were to be allowed under the Guam-CNMI Visa Waiver Program. We believe that the requested change to the language of the interim final rule is consistent with both the explicit language of the CNRA regarding the Guam-CNMI Visa Waiver Program and the intent of Congress that "the Commonwealth be given as much flexibility as possible in maintaining existing businesses and other revenue sources, and developing new economic opportunities."

III. THE COMMONWEALTH'S FOREIGN LABOR REQUIREMENTS, EXISTING FOREIGN WORKERS, AND THE COMMONWEALTH ONLY TRANSITIONAL WORKER PROGRAM

A second component of the CNRA that severely impacts our economy is the termination of the Commonwealth's ability to attract and retain a pool of qualified and willing foreign workers to augment the local workforce in the numbers needed to meet the labor demands of the private business sector. The termination of this historic right granted under the Covenant has not been replaced with a comparable federal system, but rather seems based on the assumption that either existing U.S. workers in the Commonwealth will hold multiple full-time jobs or there will be a mass migration of thousands of U.S. citizens from the mainland who desire to work in the Commonwealth of the Northern Mariana Islands as hotel chambermaids, store clerks, waiters and waitresses, and the like. Despite the enormous impact on the Commonwealth community that the discontinuance of available foreign labor will bring about, regulations pursuant to the CNRA have not yet been published in this regard.

Approximately two-thirds of the Commonwealth's total labor pool is comprised of foreign workers. It is worthy of note that these approximately 18,000 foreign workers are employed at a time when the Commonwealth's economy is in a long-term and severe depression. In the event the Commonwealth's economy was to begin to grow in the next few years, the need for foreign labor would increase. The stated objective of the CNRA is to reduce the number of Commonwealth Only Transitional Workers "to zero, during a period not to extend beyond December 31, 2014, unless extended [by the United States Secretary of Labor]." To decrease that number to zero is akin to removing over 90 million workers from the United States workforce. There are not 18,000 local workers waiting to fill those positions and the likelihood of 18,000 United States citizens moving from the mainland to fill those positions is zero. Although the CNRA seems to allow the Secretary of Labor to authorize extensions of the Commonwealth Only Transitional Worker program, it does not guarantee those extensions and it does not relieve the Secretary of the "reduce to zero" obligation. Thus, a cloud of uncertainty looms over the Commonwealth for current businesses as well as potential investors. Healthy, growing economies are not borne of uncertainty.

The Commonwealth public school system graduates fewer than 700 students annually. The majority of those students do not enter the full-time workforce immediately. By way of example, the Marianas High School class of 2008 reported 48 percent of its members were attending college following graduation and an additional 17 percent were joining the military. Only 35 percent of the graduating seniors would potentially be available for full-time employment. Applying those percentages to the entire public school system leads to 241 potential new entrants into the Commonwealth labor pool. It is unrealistic to expect 18,000 additional jobs to be filled by the residents of the Commonwealth.

One popular misconception is that repatriated foreign workers can simply be replaced by workers from the mainland. Those unfamiliar with realities of island life might pose the question: Why not employ United States citizens from the mainland to staff the economy? The fact is that some do come to the islands – but many individuals from the mainland who move to the islands for employment reasons find adjustment difficult and do not remain long after their initial enthusiasm wears off. Usually, disenchantment of one spouse or the other is likely to result from one or more of the following: high cost of living compared with the United States, particularly for utilities and food; limited and expensive supply of fresh fruit, vegetables, and other refrigerated foods; perceived or actual limited medical facilities or educational opportunities; inability to adapt to a

different environment; limited employment opportunities for a spouse; the expense of moving household effects vast distances and the cost of re-establishing one's household; limited opportunities for professional growth; hot and humid climate; separation from family members on the mainland and the expense of returning for frequent visits. The Commonwealth is a service-oriented economy with limited opportunities for many professions; opportunities for cultural enrichment are limited; there is no public transportation; public utilities are far more expensive than the mainland and far less reliable; and, in some cases, special medical needs or special educational needs cannot be met. Individuals with employment options available to them in the mainland are not likely to endure perceived or actual inconveniences on a small group of islands whose capitol island is 46 square miles of land, over 6,000 thousand miles of open ocean from the west coast of the United States, accessible only by a grueling journey involving a minimum of 13 hours of air travel in addition to many hours of layovers. In this sense, the Commonwealth truly is an "insular" area. In the mainland, employers in one town can attract prospective employees from surrounding areas with relative ease. Employees can choose to work in cities or towns as far away from their homes as they wish to commute without having to sell their homes, without moving their children to different schools, without causing their spouses to seek new employment, and without abandoning their established social network. That level of worker mobility does not apply in an island setting. The move to an island community many thousands of miles from the mainland United States is a tremendous undertaking that very few people are willing to commit to. There will not be a migration of United States citizen workers into the Commonwealth in numbers sufficient to supplant our foreign workforce.

In the event the directives of the CNRA with respect to foreign workers are not amended, we believe that any process implemented in furtherance of the congressional mandate to eventually reduce the number of CNMI-only workers to zero should be the result of collaboration between federal officials, the Commonwealth government, and representatives of private sector employers in the Commonwealth. Inasmuch as there will be a continued need for foreign workers in the Commonwealth, the determination of which employers are allowed to retain foreign workers, even as other employers are denied that ability, requires input from parties other than representatives of various federal agencies located 8,000 miles from the Commonwealth in Washington, D.C.

There is great concern amongst employers and foreign employees alike about the likely process that will be implemented with regard to foreign workers who exit

the Commonwealth and then return. We have come to understand that although a foreign employee lawfully in the Commonwealth on the transition program effective date may not be deported until the earlier of the expiration of that employee's employment authorization or two years after the transition program effective date, if that employee desires to temporarily depart the Commonwealth during that time, he or she must first obtain federal status prior to departing and then obtain a United States visa at a foreign consular office in order to reenter. Foreign employees in the Commonwealth routinely return to their home countries for family visits, deaths in the family, or medical care. We believe it is contradictory to the intent of the CNRA to require foreign employees who are considered "authorized by the Secretary of Homeland Security to be employed in the Commonwealth" to undergo a time-consuming and expensive federal visa process in a foreign country in order to return to their authorized employment. Such a requirement will cause further uncertainty and harm for Commonwealth employers, employees, and potential investors. We believe that a multiple-entry visa should be issued, in the Commonwealth, to each foreign worker granted Commonwealth Only Transitional Worker status or other federal status. In the alternative, there should be an expedited visa process at foreign consular offices for those workers in the event they are required to obtain the visas outside of the Commonwealth.

While we appreciate how daunting a task it must be for DHS to create an entirely new set of regulations for a program unlike any that the department has administered before, the very fact that those regulations have not yet been published is detrimental to the Commonwealth business community, and economy, even now. Although the CNRA provides an initial two-year prohibition against the removal of individuals lawfully present on the transition program effective date, current and prospective employers must know the terms under which the vast majority of our foreign workforce, who will not qualify for federal employment-based visas, will be reduced to zero and the timeline for that reduction. There will be little to no new investment in the Commonwealth until those regulations are published. Once the regulations are published, there will continue to be little to no new investment in the Commonwealth unless those regulations, or an amendment to the CNRA, provide a mechanism for employers to ensure that there will continue to be unfettered access to a qualified foreign workforce in the event there are no qualified United States citizen applicants for unfilled positions.

We believe that the creation of a permanent federal visa category for CNMI-only foreign workers would be an essential component in ensuring the long-term

economic viability of the Commonwealth. Such a visa program could be easily administered by DHS, it could require a showing that no United States citizen is available to fill the particular jobs (as with H visas), and it could simply not contain the requirement that jobs for which unskilled employment-based visas are awarded be seasonal or temporary in nature. The existing H visa category is of limited use in the Commonwealth. There will likely be some accountants, engineers, and other professionals who will qualify for H-1 visas (it has been estimated that substantially less than ten percent of foreign workers currently working in the Commonwealth would qualify for H-1 visas), but there will be almost no use for the H-2 visa category (unless there is a particularly large construction project). The Commonwealth's labor needs are not temporary or seasonal; they are permanent and year-round.

While the Chamber is concerned that the relevant regulations have not yet been published, we are more concerned that the CNRA does not recognize the realities of the Commonwealth labor market and does not contemplate, provide for, or even seemingly allow adequate alternatives in the face of an unrealistic congressional directive that the Commonwealth develop a self-sustaining labor pool.

IV. THE COMMONWEALTH'S FOREIGN INVESTOR BASE

There are currently 478 foreign long term business permit holders in the Commonwealth. As a group, these foreign investors annually contribute millions of dollars to the Commonwealth tax base and employ over 4,000 United States citizen and foreign worker employees (who also contribute to the Commonwealth tax base). The companies operated by these investors have aggregate assets in the Commonwealth of approximately one-quarter of a billion dollars.

The Commonwealth's economy is heavily dependent on foreign investment. While some of those foreign investors will qualify for federal Treaty Investor status, many will not. Although a significant portion of foreign investment in the Commonwealth may not appear "substantial" to federal officials or may not have a "significant economic impact in the United States," it does not follow that all of those foreign investors have not been providing valuable goods or services to our isolated community which, in most cases, is closer to their home countries than it is to the mainland United States. Many of our foreign investors have resided in the Commonwealth for years, and most are law-abiding, tax-paying members of our business and social communities.

While we understand that future investors will need to comply with applicable federal visa requirements, we believe that it would be both equitable and in the best interests of the Commonwealth community and economy that there be a one-time "grandfathering" of the portion of the foreign investor base in the Commonwealth who will not otherwise qualify for federal visas because they do not meet the "substantial" or "significant economic impact" tests, but who do provide important goods and services in the Commonwealth. The federal government, the Commonwealth government, and representatives of the private sector should collaboratively develop a system to identify foreign investors in the Commonwealth who provide needed and valuable services to our island community and who would not qualify for federal Treaty Investor status, but who should be granted federal nonimmigrant investor status by virtue of their investment in the Commonwealth.

As with foreign workers, regulations for our foreign investors have unfortunately not yet been published. There is, however, a concern that foreign investors, like foreign workers, will face unnecessary, time-consuming, and costly visa issues should they travel outside the Commonwealth for business or pleasure. We make the same request with regard to the issuance of visas for foreign investors that we have made for foreign workers.

V. CONCLUSION

Although not specifically addressed in the CNRA, the Commonwealth's tourism industry is the common thread that links the issues of the Guam-CNMI Visa Waiver Program, the Commonwealth's foreign workers, and the Commonwealth's foreign investors. It is important that Congress understand the nature of the Commonwealth's remaining viable industry and understand how tenuous our ability to serve the customers of that industry is. Although in a serious decline, the Commonwealth's tourist industry is the backbone of our economy. There are very few, if any, businesses that do not receive at least derivative benefits from the tourism industry.

The tourism industry generates approximately one-third of the Commonwealth government's overall revenues. A large portion of the Commonwealth's overall workforce, as well as foreign workforce, is employed in tourism-related jobs. Approximately 100 companies controlled by foreign investors provide goods and services to our tourists. The cumulative effect of P.L. 110-229 will likely be to exclude current tourist sources, decrease the number of employees available to serve the remaining tourists, and exclude many foreign investors whose

companies provide goods and services to tourists. This scenario can be avoided, but it will require Congressional oversight of the departments charged with implementing the law and it will require Congress to reconsider a few of the misapprehensions upon which the law was premised and consider amending portions of the law.

In enacting Public Law 110-229, the United States Congress clearly expressed its will that federal immigration law be applied to the Commonwealth of the Northern Mariana Islands. Congress must now ensure that the various federal departments charged with responsibilities under that law carry out, to the fullest possible extent, the Congressional intent "to minimize, to the greatest extent practicable, potential adverse economic and fiscal effects of phasing out the Commonwealth's nonresident contract worker program and to maximize the Commonwealth's potential for future economic growth. . . encouraging diversification and growth of the economy of the Commonwealth. . . recognizing local self-government. . . [and] assisting the Commonwealth in achieving a progressively higher standard of living for citizens of the Commonwealth. . ." Already, in the form of the interim final rule establishing the Guam-CNMI Visa Waiver Program, Congressional intent is not being adhered to. The interim final rule, as published, will cause significant economic harm to the Commonwealth of the Northern Mariana Islands. The fact that the Department of Homeland Security has not yet published regulations with respect to the Commonwealth's foreign workers and foreign investors is currently causing economic harm to the Commonwealth.

The Saipan Chamber of Commerce respectfully requests that Congress require the Department of Homeland Security to include Russia and China in the list of visa waiver program participating countries and that the transition program effective date be delayed until the Department is able to comply with that directive. We ask that Congress reconsider its stated intent to reduce "to zero" the number of Commonwealth Only Transitional Workers, perhaps through the creation of a federal employment-based visa category specific to the Commonwealth. We also request that Congress consider a one-time "grandfathering" of certain existing Commonwealth foreign investors who would otherwise not qualify for federal foreign investor visas. Finally, we ask Congress's assistance in ensuring that any foreign worker or foreign investor who is permitted to lawfully remain in the Commonwealth during the transition period, and who is granted federal status, be allowed to travel freely between the Commonwealth and other countries without having to apply for a federal visa through an expensive and time-consuming process in a foreign country.

We would be happy to answer any questions that the subcommittee may have or provide any additional information required, and thank the subcommittee for its consideration of these matters of great import to the Commonwealth.